

January 18, 2006

Office of the Secretary
Federal Communications Commission
Suite 110
236 Massachusetts Avenue, NE
Washington, DC 2002

Re: American Health Care Association Comments on Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Docket No. 05-338

To Members of the Commission:

The American Health Care Association (AHCA) appreciates the opportunity to comment on the above-referenced proposed rule, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991* (Proposed Rule) and hereby submits comments in response to the Notice of Public Rulemaking; Request for Public Comments, 47 CFR Part 64 (Dec 19, 2005) ("Proposed Rule") issued by the Federal Communications Commission ("FCC" or "Commission").

AHCA is a federation of affiliated long-term care provider associations representing some 10,000 nonprofit and for-profit nursing facilities, skilled nursing facilities ("SNFs"), assisted living and residential care facilities, sub-acute providers, and intermediate care facilities for the mentally retarded and developmentally disabled. AHCA and its membership are committed to continuous improvement in the delivery of professional and compassionate care provided daily by millions of caring employees to more than 1.5 million of our nation's frail, elderly and disabled citizens who live in SNFs, assisted living residences, and other facilities. The vast majority of our member long-term care facilities participate as SNFs in the Medicare program. Therefore, AHCA and its members have a direct interest in complying with all applicable regulatory requirements and rely heavily on fax communications to disseminate relevant materials.

AHCA generally supports the above mentioned proposed regulations as adopted and published on December 9, 2005.

AHCA is appreciative of the Commission's action to eliminate the need for express permission to send facsimile advertisements to our members based on a qualifying established business relationship (EBR). The EBR exemption to the prohibition on sending unsolicited facsimile advertisements will allow the Association to continue to provide access to critical educational materials to our members that help them to understand and comply with the many other regulatory requirements and clinical advances that underpin their delivery of patient care to our elderly population on a daily basis. We strongly support the amendment to section 64.1200(a)(3) eliminating the huge burden of obtaining an express, written permission to deliver necessary advertisement to health care providers expecting the advertisement as a part of their voluntary membership in their representative trade association. AHCA urges the Commission to retain amended section 64.1200 (a)(3) in its final rule.

With regards to the Commission's request for comment surrounding the circumstances under which an individual should be considered to have voluntarily agreed to make a facsimile number available for public distribution, AHCA believes that membership in a trade association, where the member has voluntarily communicated a facsimile contact to the association, constitutes agreement. AHCA, thus recommends that voluntary participation in a trade association and communication of a facsimile contact be established as an acceptable parameter defining a person who provides a facsimile number within the context of an EBR. However, we do note in consideration of our specific comments below, that the

burden of producing member and voluntary facsimile rosters becomes incrementally burdensome and costly the shorter the EBR duration limitations, if any is imposed.

AHCA also supports the grandfathering of permissible facsimile advertisements to persons with a demonstrable EBR prior to July 9, 2005. In the case of trade associations, if the association can demonstrate the individual was a member of the association prior to July, 9 2005 that should be sufficient proof of EBR. Proof should be required to be produced only on the basis of complaints by recipient individuals that they, in fact, are not a member or did not voluntarily disclose a facsimile number to the association, in order to minimize the paperwork and cost burden on the association. We agree that the Commission should establish reasonable bars when establishing what a “significant number of complaints,” would determine that there is no credible EBR and what duration is “inconsistent with reasonable expectation of the consumer” (receiver) discontinuing his/her EBR with the sender. AHCA does not take issue with the imposition of the 18/3-month limitations as proposed in this rule based on credible comment from facsimile recipients that there is a significant benefit to an EBR time limitation.

AHCA supports and advocates for the retention of the proposed definition of EBR for the purposes of section 64.1200(a)(3) in the Commission’s final rule.

AHCA also strongly recommends that the Commission, under its authority provided at Section 2(e) amending section 227(b)(2) of the Junk Fax Prevention Act, exempt nonprofit organizations such as the American Health Care Association, a 501(c)(6) nonprofit trade association, from the undue burden of a notice requirement.

In the event that the Commission does not take advantage of its new authority and grant a notification exception to tax-exempt nonprofit professional and trade organizations, AHCA recommends the Commission:

- Determine the specific circumstances a notice to recipients to opt-out of future facsimile transmissions meets the requirement of “clear and conspicuous,” perhaps by providing a acceptable language, type size, location examples.
- Require no less than a 30-day limitation on Facsimiles following a an opt-out request as the reasonable time period for senders of unsolicited facsimile advertisements to honor a do-not- fax request.
- Conduct a cost/benefit analysis from both the recipient and the sender’s perspective for a fair and reasonable decision on the imposition of any cost-free-mechanism, and what that mechanism should be, i.e. email, website, telephone, etc.

While, AHCA supports the FCC’s efforts in this rule, with consideration of our specific comments above, we also believe the proposed rule still has not adequately addressed the disparity and opportunity for disagreement between the Federal statute and individual state regulatory requirements governing facsimile advertisements. This is a substantial burden and barrier for AHCA and other national tax-exempt nonprofit professional and trade associations as they must now maintain compliance with a patchwork of requirements which effectively removes the opportunities to continue facsimile advertisements protected and governed under the proposed rules and regulations. Furthermore, as an organization whose members have a duty and a desire to comply with a large body of Federal regulations across multiple agencies, this effective prohibition from faxing to members in multiple states severely restricts AHCA’s ability to advertise products and services specifically tailored to assist our

national membership adhere with Federal requirements. This barrier is counter to the intent of the proposed rules and regulations whereby a consistent standard could be applied to facsimile advertisements. We respectfully ask the Commission to consider this perspective in promulgating its final rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce Yarwood", with a large, stylized flourish at the end.

Bruce Yarwood,
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